State of Illinois

Illinois Commerce Commission

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY and UNION ELECTRIC COMPANY Petition for approval of tariff sheets implementing revised Market Value Index methodology.	)	Docket No. 02-0656
COMMONWEALTH EDISON COMPANY Proposed revision of Rider PPO (Power Purchase Option – Market Index), Rate CTC (Customer Transition Charge) and Rider ISS (Interim Supply Services), and to establish Rider CTC – MY (Customer Transition Charge – Multi-Year Experimental) (Tariffs filed on October 1, 2002)	)	Docket No. 02-0671
ILLINOIS POWER COMPANY Proposed establishment of Rider MVI II, Market Value Index II. (Tariff filed October 1, 2002)	)	Docket No. 02-0672
ILLINOIS POWER COMPANY Proposed revisions to Rider TC (Transition Charge for Customers), Rider PPO (Power Purchase Option Service) and Rider MVI (Market Value Index)	)	Docket No. 02-0834 (Cons.)

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REPLY BRIEF OF THE STAFF

OF THE ILLINOIS COMMERCE COMMISSION

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February 5, 2003

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I. Introduction

NOW COMES the Staff of the Illinois Commerce Commission ("Staff"), through its attorneys, and files its Reply Brief in the above-captioned proceeding. In addition to Staff, the following parties filed Initial Briefs: Commonwealth Edison Company ("ComEd"), Illinois Power Company ("IP"), Ameren Central Illinois Public Service Company and Ameren Union Electric Company ("Ameren"), The RES Coalition, The United States Department of Energy ("DOE"), Building Owners and Managers Association ("BOMA") of Chicago, Trizec Properties, Inc. ("Trizec"), Illinois Industrial Energy Consumers ("IIEC"), The National Energy Marketers Association ("NEM"), and the Illinois Energy Consortium ("IEC").

Staff in this Reply Brief will respond to certain arguments made by ComEd, IP, BOMA, the RES Coalition, and the IIEC. Staff's Initial Brief extensively addressed the issues in this proceeding; therefore, the absence of a response by Staff in this brief, to any argument made by any of the parties should not in any way be construed as acquiescence in or approval of said argument.

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Staff's Initial Brief presented Staff's evaluation of the floating adder proposal. Staff noted that Section 16-112 describes only two methods for determining market values and that the Commission's authority to adopt alternative methods may be limited. Staff argued that the role for Staff described in the Memorandum of Understanding ("MOU") would constitute an improper delegation of authority by the Commission. However, Staff's Initial Brief also recognized that a methodology that adjusts market values upwards in response to a persistently low level of customer switching might be a way to improve the accuracy of "actual" market values. (ICC Staff I. Brief, pp. 26-28)

During the hearings in this proceeding, IP suggested an alternative method to adjusting market values that does not rely on Staff evaluating the affidavits that suppliers would have to file describing their marketing efforts. (Tr. 201-02) This alternative plan was not well described, and Staff did not express an opinion about the merits of the plan in its Initial Brief. In its Initial Brief, IP gave slightly more information about the mechanics of the alternative plan, but unfortunately devoted very little space in its Initial Brief to a description of the alternative plan, leaving several points about the plan unclear.

For example, the alternative plan would permit IP to file a petition with the Commission to cancel an increase in market values produced by the floating adder calculation process. However, it is not clear what standards the Commission should use in evaluating such a petition and it is not clear how any resulting offset to the existing level of market values should be applied should IP persuade the Commission that RESs had not marketed with sufficient aggression.

Even though there is little description about the details of the alternative plan, Staff has fewer reservations about this plan than it had for the original plan described in the MOU, and the alternative plan is acceptable to the signatories to the MOU. (IP I. Brief, p. 21) Nevertheless, there is very little support in the record regarding the consequences of a successful petition challenging the suppliers' affidavits. Staff recommends that the Commission make no finding in this proceeding on this point; rather, the Commission should reserve its opinion regarding how market values would be affected for the petition proceeding.

F. Other

The IIEC expressed concern that RESs may not enter the IP market to serve customers that lose their eligibility due to the adoption of the floating adder proposal. The IIEC suggests that the Commission approve the proposal only if there is no impact on customer eligibility for the Power Purchase Option ("PPO"). (IIEC I. Brief, p. 20) Staff shares the IIEC's concern that the near-term primary impact of the floating adder proposal will be a widespread loss of customer PPO eligibility. If this concern were to be realized, the floating adder proposal would be harmful to the development of competition rather than beneficial.

To resolve this problem, IP could voluntarily agree not to allow the floating adder proposal to affect PPO eligibility, in effect agreeing to use two different transition charge calculation methods. One method would apply to RES customers only and would incorporate the floating adder. The second method would be used for the purpose of determining PPO eligibility and would not incorporate the floating adder. Alternatively, if the Commission shares the concern that more customers will lose their PPO eligibility than will be picked up by RESs, the Commission could adopt IIEC's suggestion to appropriately condition its approval of the floating adder plan.

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ComEd has proposed a limitation of 500 MW on its multi-year transition charge offering. Customer groups and the RES Coalition suggest that the load restriction should be removed. These groups further suggest that all competitive service customers should become eligible for a multi-year transition charge. (BOMA I. Brief, p. 6; IIEC I. Brief, p. 27; RES Coalition I. Brief, p. 54) Staff suggested that all customers with an individual transition charge should be eligible to receive a multi-year transition charge but expressed no opinion about raising the 500 MW cap (ICC Staff I. Brief, p. 35). ComEd opposes raising the 500 MW maximum but indicated a willingness to discuss the issue further with interested parties. (ComEd I. Brief, pp. 28-29)

Staff does not oppose the intervenors' suggestions permitting all competitive service customers to have a right to a multi-year transition charge. Competitive service customers are not eligible to return to bundled service, making such customers more dependent on service provided by RESs than other customers that have the full array of supply options available to them. Multi-year customers are equally dependent on RES supply, since multi-year customers give up their rights to PPO service.

If the competitive service customers were automatically eligible for a multi-year transition charge, the remaining issue is whether the 500 MW maximum should be raised or removed, as the intervenors suggest. ComEd has about 350-375 ComEd customers with a demand greater than 3

MW. (Crumrine Tr. 797, cited in IIEC I. Brief, p. 26) Practically speaking, the 500 MW limit would have to be doubled or tripled to give customers with a demand between 400 kW and 1 MW a realistic chance to be successful in the multi-year transition charge auction if competitive service customers were automatically eligible for multi-year transition charges.

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VII. Conclusion

For the foregoing reasons and those stated in its initial brief, the Staff of the Illinois Commerce Commission respectfully requests that the Commission accept Staff's recommendations.

Respectfully submitted,

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